

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'I': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.537/Del/2023
[Assessment Year: 2018-19]**

TCI-GO Vacation India Private Limited, Tower B, Delta Square, M.G. Road, Sector-25, Grurugram, Hararyana-122001	Vs	Assistant Commissioner of Income Tax, Cricle-3(1), HSIIDC Building, Vanijya Nikunj, Udhyog Vihar, Phase-V, Gurgaon, Haryana-122001
PAN-AADCT0116G		
Assessee		Revenue

Assessee by	Mr. Deepak Joshi, Adv.
Revenue by	Shri R.D. Burman, CIT(DR)

Date of Hearing	11.01.2024
Date of Pronouncement	09.02.2024

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the Assessing Officer dated 29.12.2022 passed u/s 144C of the Income Tax Act, 1961 (hereinafter 'the Act') arising out of order of Dispute Resolution Panel dated 03.03.2022 pertaining to Assessment Year 2018-19.

2. The only issue raised in the appeal is that computing of interest amounting to Rs.5,68,919/- on the receivables from AE by way of Transfer Pricing Adjustment.

3. Against the order of the Assessing Officer, the assessee has filed appeal before us.

4. We have heard both the parties and perused the records. The ld. Counsel for the assessee submitted that the DRP has erred in

distinguishing the decision of the Hon'ble Delhi High Court in the case of PCIT vs Kusum Healthcare Pvt. Ltd. 398 ITR 66 (Del). The Id. Counsel for the assessee submitted this issue is covered in favour of the assessee. He submitted that the notional interest cannot be added to the receivables from the AE. He submitted that the assessee is debt free company and 100% business with the AE and that no interest has been paid nor received from any third party. Further, he relied upon several case laws which reads as under:-

- i. PCIT vs Kusum Healthcare Pvt. Ltd.[2018] 99 taxmann.com 431(Del)/(2017) 398 ITR 66 (Del).
- ii. PCIT vs Boeing India (P.) Ltd. [2023] 146 taxmann.com 131 (Delhi)
- iii. Alcatel Lucent India Limited vs ACIT (ITA No.366/Del/2022)

5. Per Contra, the Ld. Departmental Representative relied upon the orders of the authorities below and further referred to the decision of the Tribunal in the case of Bechtel India Pvt. Ltd. vs ACIT [2017] 85 taxmann.com 121 (Delhi Trib.)

6. Upon careful consideration, we find that in the case of Alcatel Lucent India Limited (supra), this Tribunal has considered similar issue and held as under:-

“We find that ITAT in its recent decision in Orange Business Services India Solutions)P.) Ltd. has elaborately noted similar facts and has held as under :-

“10. The Id. DRP held that the assessee's reliance on the Delhi High Court's decision in Kusum Health Care (P) Ltd. (supra) is quite misplaced as in that case an important aspect of the matter was not brought to the notice of their lordships of the High Court that this new explanation to section 92B was specifically inserted to reiterate the fact that the items

enumerated in the explanation will ipso facto partake the character of an international transaction and will be subjected to transfer pricing provisions irrespective of whether they have any bearing on profit/loss of the relevant year or their impact on profit/loss account is determinable under normal computation procedures other than the transfer pricing regulations. The Id. DRP quoted legislative intent which has been elucidated in the Explanatory Memorandum to the Finance Bill 2012.

11. This issue has been adjudicated by the Tribunal examining the decisions in the case of Kusum Healthcare, Mckinsey Knowledge, Ameriprise India (P.) Ltd. The details are as under.

12. The Delhi Tribunal in case of Kusum Healthcare (P) Ltd. v. Asstt. CIT [2015] 62 taxmann.com 79 held that the working capital adjustment takes into account impact of outstanding receivables and no further adjustment required if the margin of the assessee is higher than working capital adjusted margin of comparable.

13. The Hon'ble Delhi Tribunal in case of Ameriprise India (P) Ltd. (supra) considered the decision of coordinate bench in the case of Kusum Healthcare and held that the allowing working capital adjustment in the international transaction of rendering services can have no impact on the determination of ALP of the international transaction of interest on receivables from AEs.

14. The Delhi Tribunal in the case of McKinsey Knowledge Centre (P) Ltd. (supra) followed their finding in the case of Ameriprise India (supra).

15. In the meanwhile, the Hon'ble Delhi High Court, vide order dated 25-4-2017 in the case of Kusum Healthcare (supra), dismissed the appeal of the revenue against the decision of Hon'ble Tribunal and that (i) The inclusion in the Explanation to section 92B of the Act of the expression "receivables" does not mean that de hors the context every item of "receivables" appearing in the accounts of an entity, which may have dealings with foreign AEs would automatically be characterized as an international transaction and (ii) With the Assessee having already factored in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-a-vis that of its comparables, any further adjustment only on the basis of the

outstanding receivables would have distorted the picture and re-characterized the transaction.

16. In the appeal filed by the assessee in the case of Mckinsey Knowledge, the Hon'ble High Court vide order dated 7-2-2018, while admitting the appeal on the other issue, remitted the issue of interest charged on outstanding receivables to ITAT, following their decision in the case of Kusum Healthcare.

17. However, vide order dated 9-8-2018, the Hon'ble High Court in the case of Mckinsey Knowledge, while deciding the appeal of the assessee on other issue, also referred to the decision of the Hon'ble Delhi Tribunal in case of Ameriprise India (P) Ltd. (supra) on issue of interest charged on outstanding receivable and concluded that the assessee's contention that the TTAT erred in concluding that charging of interest on delayed receipt, of receivables is a separate international transaction which requires to be benchmarked independently, is incorrect."

18. Aggrieved, the taxpayer (Mckinsey Knowledge) filed Review Petition before the Hon'ble High Court against the order dated 9-8-2018 and the Hon'ble High Court, vide order dated 16-4-2019 in Review Pet. No. 360/2018, was pleased to recall/correct their order dated 9-8-2018 holding as under:

"9. As far as the first argument by the review petitioner, i.e., the answer to the question of bringing to tax the interest amounts goes, this Court is of the opinion that the fact that the order of 7 -2-2018 referred to Kusum Health Care had expressly remitted the matter for consideration to the ITAT supports the assessee's submission. All that the court had stated on 7-2-2018 was that the matter required re-examination by the ITAT in the light of the Kusum Health Care (supra). For these reasons, the judgment to the extent it deals with adjustments made by the TPO, and regarding interest on delayed receipt of receivables, is a clear error. The court also furthermore notes the submissions made with respect to inapplicability to Explanation of Section 92B and its prospective operation. As the order of 7-2-2018 reserved by-contentions, this Court does not propose to disturb the effect of that matter. The matter will be considered by the ITAT on its own merits."

19. In view of the aforesaid sequence of events, it would be noted that the decision of Hon'ble Delhi High Court in the case of Kusum Healthcare is still the binding precedent on the issue of interest on outstanding receivables. Needless to mention that the law laid down by the Hon'ble High Court in the case of Kusum Healthcare was followed by the ITAT in case of Global Logic India Ltd. v. Dy. CIT [2019] 102 taxman1.com 115(Delhi - Trib.), Global Logic India Ltd. v. ACIT [2020] 117 taxmann.com 6401185 ITD 795(Delhi - Trib.) and Global Logic India (P) Ltd. v. Dy. CIT [2022] 134 taxmann.com 35(Delhi - Trib.). Hence, keeping in view, the established position, we hereby deleted the addition made by the Assessing Officer."

13. Since on identical facts it has been found that the Hon'ble jurisdictional High Court decision is still the binding precedent, we respectfully follow the same and set aside the order of authorities below. In the result, the assessee's appeal is allowed."

7. Since, the facts are identical and it has been found that the decision of the Hon'ble jurisdictional High Court is still binding precedent. We respectfully follow the same and we set-aside the orders of the authorities below and decide the issue in favour of the assessee.

8. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 09th February, 2024.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Delhi; Dated: 09.02.2024

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi